

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





77-1225

IN THE

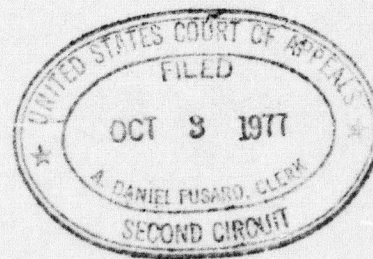
UNITED STATES COURT OF APPEALS  
for the SECOND CIRCUIT

-----  
Docket No. 77-1225  
-----

-----X  
UNITED STATES OF AMERICA,       :  
          Appellee,               :  
      -against-                   :  
ERROL G. O'SAVIO,               :  
          Appellant.             :  
-----X

B  
PFS

APPENDIX FOR APPELLANT



ALTON H. MADDOX, JR.  
LAW OFFICES  
126 WEST 119TH STREET  
NEW YORK, N. Y. 10026  
212 666-3501

PAGINATION AS IN ORIGINAL COPY



DA -1

1 UNITED STATES OF AMERICA

2 vs.

76 Cr. 836

3 ERROL G. O'SAVIO

4 November 11, 1976

## 5 CHARGE OF THE COURT

6 BONSAI, J.

7 THE CLERK: The Court will now charge the jury.  
8 Spectators may leave at this time or remain seated until the  
9 completion of the charge. Will you lock the door, please,  
10 Marshal.

11 THE COURT: Madam forelady, as you are, Miss. Teitler,  
12 by virtue of occupying the first chair, and ladies and gentle-  
13 men of the jury..

14 I would like to join with the lawyers in thanking  
15 each of you for the careful attention you have shown through-  
16 out this short trial and I would like to tell you that I  
17 appreciate the sacrifices that I know each of you has been  
18 called upon to make in your own personal lives so you can serve  
19 in this very important capacity on a federal jury. I know you  
20 will bear with me and give me the same degree of attention  
21 that you have done throughout so that you will understand  
22 the principles of law that apply to this case.

23 You remember I told you at the outset when you were  
24 selected that it is your duty here to weigh the evidence  
25 calmly and dispassionately without any sympathy and without

1 rg2

2 any prejudice for or against either the Government or this  
3 defendant. I told you at that time that every defendant  
4 appearing before this bar of justice is entitled to an absolute  
5 fair and impartial trial, regardless of his occupation or  
6 station in life.

7 I told you that your verdict must be based solely  
8 on the testimony which you heard from that witness chair and  
9 on the exhibits which you received in evidence and on nothing  
10 else at all.

11 I told you that in our system of justice it is my  
12 function to instruct you as to the law and as to that you must  
13 accept my instructions, but you, the jury, are the judges of  
14 the facts. It is not what a lawyer says what a witness  
15 testified to or what a document contains or shows or what I  
16 say about these things, it is what you, the jury, remember  
17 and decide.

18 I also told you that during the trial you would  
19 observe me having a conversation with one or another of the  
20 lawyers, and indeed I did. I sustained objections and I over-  
21 ruled them. I told you then, and I repeat now, pay no attention  
22 to these conversations.

23 Above all, ladies and gentlemen, draw no inference  
24 from anything I may have said during this trial which might  
25 lead you to feel that favor one side or the other here because



1 rg3

2 of course I do not. That is your province.

3 Throughout my charge, ladies and gentlemen, I will  
4 instruct you that you may not convict the defendant, Mr. O'Savio,  
5 unless and until you are satisfied that the Government has  
6 proven each element comprising the crimes charged beyond a  
7 reasonable doubt.

8 Now, what do we mean by the expression beyond a  
9 reasonable doubt? Ofcourse the words suggest the answer. It  
10 is a doubt based on reason. It is a doubt which a reasonable  
11 man or woman would entertain, but a reasonable doubt is not  
12 a fanciful doubt, it is not a imagined doubt, it is not a  
13 doubt that a juror might conjure up to avoid performing an  
14 unpleasant task, it is a reasonable doubt. It is a doubt that  
15 arises in a jurors mind because of something in the evidence  
16 or the lack of evidence in the case. It is the kind of doubt  
17 which would cause a reasonable man or woman in a more serious  
18 and important matter in his or her own life to hesitate to  
19 act, and the burden is on the Government to prove the guilt of  
20 the defendant beyond a reasonable doubt.

21 The Government need not prove guilt beyond all possible  
22 doubt. If that were the rule few people, however guilty they  
23 might be, would ever be convicted. In this world of ours' it  
24 is practically impossible for one to be absolutely and completely  
25 convinced of any controverted fact which by its nature is not

1 rg4

2 susceptible to mathematical precision or to mathematical  
3 certainty, so it is the law the Government must prove guilt  
4 beyond a reasonable doubt, not beyond all possible doubt.

5 When I review the indictment with you, ladies and  
6 gentlemen, I remind you as I mentioned at the outset, that  
7 the indictment is merely the way by which the Government brings  
8 into Court individuals who it claims have violated the law.  
9 I told you that the indictment is not evidence of the guilt  
10 of the defendant and the indictment does not detract in any  
11 degree from the presumption of innocence with which the  
12 law surrounds this defendant until his guilt is proven.

13 This presumption of innocence remains with the  
14 defendant, Mr. O'Savio, throughout the trial, and applies to  
15 your consideration of each of the essential elements of the  
16 crimes charged. This presumption of innocence remains unless  
17 and until you, the jury, find the Government has proved the  
18 defendant's guilt beyond a reasonable doubt. If the Govern-  
19 ment has not proven to you that the defendant is guilty beyond  
20 a reasonable doubt, then, of course, it is your duty to find  
21 the defendant not guilty.

22 The evidence here has been marshaled for you by the  
23 lawyers this morning. I don't intend to review all that  
24 again, because after all, it is your recollection that governs  
25 and not mine. It might be helpful if I briefly related some



1 rg5

2 of the contentions as I understand them here purely in the  
3 thought that they might help you with your own recollections.

4 As I understand it here the Government is contending  
5 that Mr. O'Savio embezzled and abstracted money from the  
6 National Bank of Westchester over a period running somewhere  
7 in November 1974 to January 1976.

8 As I understand it, the theory of this is that this  
9 is in connection with these tax deposits where customers of  
10 the bank would send money to the bank to pay taxes and you  
11 heard the procedure testified to by Mr. Huie, that in connection  
12 with these transactions the Government contends that the funds  
13 would be received and as I understand it they would not be  
14 sent to the Internal Revenue Service as they were supposed to  
15 until a much later date, and in connection with some of the  
16 accounts they were not sent at all.

17 It is on the basis of this that the Government contends  
18 that Mr. O'Savio did embezzle these funds and did abstract them,  
19 take them away from the bank without the Government's permission.

20 Then you remember the evidence about the slugs and  
21 the stamp which was testified to at length by a number of  
22 witnesses.

23 Finally, I should say the Government contends that  
24 Mr. O'Savio embezzled this money and they referred to a  
25 statement which the Government contends he made before Mr.

1 rg6

2 Keefe, the investigator, which as I recall that statement, and  
3 of course you will have it available to you, that the Govern-  
4 ment contends that the defendant admitted that he took money  
5 on three occasions, I think something about loaning it to  
6 friends or something like that, but you will have the statement.

7 Mr. O'Savio denies the Government's contentions. He  
8 denies he ever embezzled any money from the bank. He denies  
9 having signed this statement before Mr. Keefe. He said all  
10 he did was to sign a two line statement, as I remember it,  
11 which had to do with a lie detector test.

12 I take it the defendant also contends that others  
13 in the bank at times did have available to them his slug and  
14 his stamp at the time when he was away from his teller's  
15 station.

16 So much for the contentions. They are not detailed  
17 and I am only doing that to try to help you in orienting  
18 yourselves.

19 Now, the statute involved here, ladies and gentlemen,  
20 is Title 18 of the United States Code, Section 656, and to the  
21 extent relevant to this case this statute provides whoever,  
22 being an officer, director, agent or employee of any insured  
23 bank -- and I will tell you about that in a minute -- embezzles  
24 or abstracts any of the moneys of such bank, or any moneys  
25 entrusted to the custody or care of such bank, is guilty of a



1 rg7  
2 crime.

3 The statute goes on to define the term insured bank.  
4 It says the term insured bank includes any bank, the deposits  
5 of which are insured by the Federal Deposit Insurance Corporation  
6 That is the statute.

7 Then the indictment here reads:

8 The Grand Jury charges:

9 On or about the dates hereinafter set forth, in the  
10 Southern District of New York -- and White Plains is in the  
11 Southern District of New York, I should tell you that -- Erroll  
12 G. O'Savio, the defendant, being an employee of the National  
13 Bank of Westchester, 328 Central Avenue, White Plains, New York,  
14 a bank, the deposits of which were then insured by the Federal  
15 Deposit Insurance Corporation -- so that relates to the statute  
16 the insured bank, you remember -- unlawfully, wilfully and  
17 knowingly did embezzle, abstract, perloin and misapply -- there  
18 are a lot of words in these indictments, b ut embezzle and  
19 abstract are the ones to remember -- funds and credits of said  
20 bank and moneys, funds and assets entrusted to the custody and  
21 care of said bank and of said employee in the approximate  
22 amount hereinafter set forth, and then the counts are listed  
23 running from 1 to 34.

24 As I recall it, this chart, Exhibit 36, is based on  
25 the same counts shown in the indictment. That was the one Mr.

1 rg8

2 Huey prepared and testified about, so I won't read you all  
3 these amounts in these 34 counts, but you must, ladies and  
4 gentlemen, consider each of these counts separately, and  
5 in order to find the defendant guilty of any of these counts  
6 the Government must prove beyond a reasonable doubt each of  
7 the following elements:

8 First, that on or about the date set forth in the  
9 count, in the Southern District of New York -- and there is no  
10 problem about that, it is quite plain it is in the Southern  
11 District -- the defendant, Mr. O'Savio, embezzled or abstracted  
12 money of a value greater than \$100 entrusted to the custody  
13 or care of the National Bank of Westchester.

14 Second, that at the time Mr. O'Savio was an employee  
15 of the National Bank of Westchester.

16 Third, that the deposits of the National Bank of  
17 Westchester were insured by the Federal Deposit Insurance  
18 Corporation.

19 Fourth, that the defendant acted knowingly, wilfully  
20 and unlawfully.

21 As I recall it, there is no dispute here that Mr.  
22 O'Savio was a teller, therefore an employee of the National  
23 Bank of Westchester during this period, and I understand that  
24 the parties have stipulated that the deposits of the National  
25 Bank of Westchester were insured by the Federal Deposit Insurance



1   rq9

2   Corporation, so it becomes an insured as that word is used in  
3   the statute the way I read it to you a couple of moments ago.

4           There is a serious dispute as to the other two items.  
5   One is that the defendant embezzled or abstracted the money and  
6   the second one is that he was acting knowingly, wilfully and  
7   unlawfully. Those are really the two significant elements  
8   here as to which there is a great dispute.

9           You remember I mentioned embezzled. What is embezzled?  
10   Well, embezzled here simply means that the money came into the  
11   defendant's hands unlawfully. He was a teller at the bank and  
12   this was his job, to collect these items, and that he converted  
13   the money to his own use. That is embezzled. He received the  
14   money lawfully as a teller at the bank, it was the bank's  
15   money, and he converted it to his own use.

16           Then there is abstract. What does abstract mean as  
17   used in the statute? Well, again all that means is that the  
18   defendant received the money as a teller an employee of the bank,  
19   and then he took the money away without the bank's knowledge  
20   or consent. In other words, he deprived the bank of the money.  
21   It is sort of two ways of saying the same thing, really, but  
22   the statute uses embezzled and abstract.

23           The Government contends, and of course the defendant  
24   denies, with respect to each of these counts that the moneys  
25   involved here came into the control of the defendant as teller.

1 rgl0

2 --- remember these checks testified to---and that he knowingly  
3 and wilfully converted the money to his own use, that he  
4 knowingly and wilfully abstracted the money from the control  
5 of the bank without the bank's knowledge.

6 If you find that the defendant did embezzle or abstract  
7 the money in the count you are considering, it is quite immateria  
8 whether you think he might have intended to return it at some-  
9 time later, that makes no difference, and it is also immaterial  
10 as to whether the bank suffered any loss or not by reason of  
11 his actions.

12 I mentioned to you that you must find that the  
13 Government has proved beyond a reasonable doubt that Mr. O'Savio  
14 was acting here knowingly, wilfully, unlawfully. How do you  
15 determine that? You have to find really here did he have the  
16 criminal intent; was he really trying to take this money from  
17 the bank.

18 Of course, an act is done knowingly and wilfully if  
19 it is done voluntarily and purposely; an act is done wilfully,  
20 knowingly and unlawfully if it is done with an evil motive or  
21 purpose, such as violating the law and taking money from a  
22 bank, but an act is not done wilfully, knowingly or unlawfully  
23 if it is done by mistake, by carelessness or by other innocent  
24 reason.

25 It is impossible to prove exactly what Mr. O'Savio



1 rgll  
2 had in mind or what his intentions were on each of these  
3 occasions. We can't look into his mind and see what knowledge  
4 he had at the time and determine his specific intentions, but  
5 these are matters which you, the jury, can determine from a  
6 careful consideration of the facts and circumstances which  
7 were brought out during the evidence here.

8           The knowledge and intentions, the wilfulness, if you  
9 will, of the defendant may only be understood when you put it  
10 in the context of the circumstances surrounding his acts and  
11 the inferences which you, the jury, find can be reasonably  
12 drawn therefrom.

13           You might ask yourself whether these transactions were  
14 normal or abnormal; whether they were open or surreptitious,  
15 whether you think the defendant had a motive, a financial or  
16 other interest in the outcome.

17           These are the kinds of questions, ladies and gentle-  
18 men, and of course they are not the only ones, that you should  
19 ask yourselves in order to determine the knowledge and intentions  
20 of this defendant. Of course I don't suggest any answers to  
21 these questions because after all, in your own daily affairs  
22 you are continually called upon to use your own common sense  
23 and experience to determine from the actions or statements of  
24 others what their real intentions and purposes are, and please  
25 do this here with respect to this defendant.

1 rgl2

2 As I remember it, the Government contends here on  
3 the basis of Mr. Keefe's testimony that the defendant signed  
4 a statement in Mr. Keefe's presence at this office on March  
5 29, 1976. I think that is Exhibit 62. As I understand the  
6 statement, it indicates that the defendant admitted that he  
7 took three different deposits from the bank and he loaned the  
8 money to friends or something like that. I haven't read the  
9 statement, but that is just my recollection of what was  
10 testified to.

11 The defendant denies that he signed this statement  
12 and he denies that he signed any statement, as I recall it,  
13 in Mr. Keefe's office, other than this two line statement  
14 which he said he thought he signed consenting to a lie detector  
15 test.

16 Consider the evidence here, ladies and gentlemen,  
17 and determine whether you find the Government has proved beyond  
18 a reasonable doubt that Mr. O'Savio did sign the statement, and  
19 if he did sign it, has the Government proved that he signed  
20 it voluntarily.

21 If you find that the Government has proved that he  
22 did sign the statement and did so voluntarily, then you can  
23 consider this statement as an admission by the defendant as  
24 to his knowledge and intentions, his purposes in the trans-  
25 actions covered by the indictment.



1 rql3

2 The law recognizes, ladies and gentlemen, two types  
3 of evidence, direct evidence and circumstantial evidence.  
4 Direct evidence is the testimony of a witness who personally  
5 observed a transaction, participated in the activity he is  
6 describing.

7 Circumstantial evidence, and there is a good deal  
8 of it in this case, consists of circumstances from which the  
9 jury may infer by the process of reasoning certain facts which  
10 are sought to be established as true.

11 Now, Mr. O'Rourke mentioned about a little boy and  
12 the wet umbrella. I don't know how good an example that is,  
13 but I think perhaps a better example would be that if you  
14 go home to your apartment one afternoon and you walk into  
15 your apartment and somebody is inside it looking at television  
16 and your hat and coat are wet, or perhaps if it is snowing  
17 they are white, the person watching television looks at you  
18 and says it's raining outside or snowing outside, as the case  
19 may be. They haven't looked outside. They have looked at  
20 you and by a process of reasoning they conclude that it is  
21 raining outside or snowing outside. That is circumstantial  
22 evidence.

23 Of course direct and circumstantial evidence are  
24 both good evidence and no greater degree of certainty is  
25 required when it is circumstantial than when it is direct.

1 rgl4

2 Different inferences may be drawn from the evidence,  
3 whether it is direct or circumstantial. The Government here  
4 is asking you to draw one set of inferences while the  
5 defendant asks you to draw another, but it is for you alone  
6 to decide what inferences you will draw from the evidence  
7 and what facts you find to have been proven.

8 Remember that your inferences here must be reason-  
9 able inferences based on the evidence in the case. You can  
10 not base inferences on speculation. Of course, whether the  
11 evidence is direct or whether it is circumstantial, the  
12 Government has the burden of proving the defendant's guilt  
13 beyond a reasonable doubt.

14 There was a point made in Mr. O'Rourke's summation  
15 about the bank manager.--I think his name was Major, but he  
16 didn't testify here and he made a point of that. I see no  
17 reason why Mr. Major couldn't have been called either by the  
18 Government or by the defendant. I think either one of them  
19 could have called him if they wanted to.

20 If you find that Mr. Major was available to both  
21 the Government and the defendant and neither side called him,  
22 you can draw the inference, if you want to, that his testimony  
23 might have been unfavorable to either the Government or to  
24 the defendant or to both, but it is equally within your  
25 discretion to draw no inference at all from the failure of



1 rgl5

2 either side to call Mr. Major as a witness.

3 You ladies and gentlemen, as the jury are the  
4 exclusive judges of the credibility of the several witnesses  
5 who appear before you. You subject all their testimony to  
6 the same standards, whether they were called by the Government  
7 or whether they were called by the defendant.

8 Of course, it is not the number of witnesses, it  
9 is the quality of the testimony which is important, the  
10 testimony which you think most likely represented the true  
11 picture of what happened here.

12 How do you determine the credibility of these  
13 witnesses? Well, here again, ladies and gentlemen, use  
14 your plain everyday common sense. You saw them testify.  
15 How did their stories impress you? Did you think they were  
16 testifying frankly, candidly, fairly? Apply your common  
17 sense and experience just as you do when you are called upon  
18 to decide an important matter in your own life, when you  
19 were called upon to decide whether you have been given a  
20 true picture of a particular situation.

21 I think you consider a witness' demeanor, you take  
22 into account his background, his occupation or business. You  
23 consider a witness' candor or lack of it, a witness' possible  
24 bias, the accuracy of his recollection and you will consider  
25 whether you find a witness' testimony is supported or whether

1 rgl6

2 you find it to be contradicted by other credible testimony  
3 or evidence.

4 You consider whether a witness has an interest in  
5 the case. You heard a lady testify, a character witness,  
6 yesterday, Mrs. Bostic.. I think you remember. She  
7 testified she was the defendant's mother-in-law for the last  
8 month or something like that. There is a family relationship  
9 and that is an interest, of course, that you might consider.  
10 Of course that doesn't mean that any witness will mislead  
11 you because he or she has an interest, it is merely a factor  
12 for you to consider in determining the credibility of that  
13 witness.

14 Then Mr. O'Savio took the stand and he testified.  
15 Obviously he has a very important interest in the outcome of  
16 this case and his interest, of course, is something you would  
17 consider in connection with the credibility which you give to  
18 his testimony, but of course here again it is quite within  
19 your province if you should so decide to conclude that Mr.  
20 O'Savio was telling the complete truth despite his interest  
21 in the outcome.

22 A witness may be discredited or impeached by  
23 contradictory evidence, or by evidence that at other times  
24 he made statements inconsistent with his present testimony.  
25 If you find that a witness has been impeached or if you find



1 rgl7

2 a witness is lying to you, you can reject all of that witness'  
3 testimony if you want or you can accept part of it if you  
4 find it reliable and you can reject the rest.

5 Again getting back for the minute to Mrs. **Bostic**,  
6 She testified as a character witness on behalf of Mr. O'Savio.  
7 You remember she testified about his reputation, honesty and  
8 integrity -- it was honesty I think she said, and she talked  
9 about the church up there.

10 Now, evidence of good reputation may be considered  
11 with all of the other evidence in determining the guilt or  
12 innocence of this defendant, and you should give her testimony  
13 such weight as you think it is entitled to.

14 Evidence of the defendant's good reputation, when  
15 considered with all of the other evidence, may be sufficient  
16 to raise in your minds a reasonable doubt as to the defendant's  
17 guilt.

18 On the other hand, if after considering the evidence  
19 here, including that good reputation, if you find that the  
20 Government has proved the defendant to be guilty beyond a  
21 reasonable doubt, then it is your duty to find the defendant  
22 guilty, notwithstanding the evidence of his good reputation.

23 Remember, ladies and gentlemen, the Government  
24 introduced two charts here which I think are Exhibits 63 and  
25 64, which were designed to help you follow Mr. **Hufe**'s testimony.

1 rql8

2 These charts are not independent proof. They are visual  
3 representations of the information contained in these various  
4 exhibits that were received in evidence. They are, in effect,  
5 a visual aid to help you understand what was in the exhibits  
6 and what is in the testimony.

7 It is your province, ladies and gentlemen, to decide  
8 whether these charts correctly present the data set forth in  
9 these exhibits and you will give no greater consideration  
10 to the charts than you would give to the exhibits themselves.

11 With this in mind you are entitled to consider  
12 these charts if you find that they accurately summarize for  
13 you the evidence and exhibits to which they pertain and  
14 assist you in analyzing and understanding the evidence.

15 As I recall it here, ladies and gentlemen, there  
16 are 34 counts in the indictment and each of these counts  
17 should be considered by you separately. You may find the  
18 defendant guilty on one count and not guilty on another, but  
19 you so decide.

20 Of course you will have the right to see any and all  
21 of these exhibits. Just let me know by telling the marshal.

22 As you deliberate, ladies and gentlemen, remember  
23 that a jury deliberation is one in which every one expresses  
24 and exchanges views. Please don't be afraid to change your  
25 original view if after talking to your fellow jurors you have



1 rgl9

2 become convinced that your original view was wrong, but on  
3 the other hand, ladies and gentlemen, never surrender your  
4 honest convictions. Never do that for any reason, not for  
5 any reason at all.

6 You will seek to arrive at a verdict here, providing  
7 you do so consistently with the conscientious convictions of  
8 each of you.

9 Of course it is important to both the defendant and  
10 the Government that this case be decided by you. This being  
11 a criminal case your verdict must be a unanimous verdict  
12 representing the conscientious convictions of each of you.

13 If you find the defendant not guilty you must not  
14 hesitate for any reason to render a verdict of not guilty,  
15 but on the other hand, if you find the law has been violated  
16 by this defendant as charged, you must not hesitate to  
17 render a verdict of guilty because of sympathy or any other  
18 reason at all.

19 Please don't consider the question of possible  
20 punishment in case you find the defendant guilty. This is  
21 no concern of yours and should not enter into your deliberations  
22 in any way. It should not affect you or make you seek to  
23 avoid the performance of an unpleasant task.

24 In conclusion, ladies and gentlemen, I am sure that  
25 if you listen to the views of your fellow jurors, express your

1 rg20

2 own views and apply your common sense you will reach a fair  
3 verdict here. Remember that that verdict must be rendered  
4 without fear, without favor, without prejudice and without  
5 sympathy.

6 There are 34 counts here and I am going to deliver to  
7 Madam Forelady a copy of the indictment so that she will have  
8 this. Remember, in delivering it to you the indictment is  
9 not evidence of guilt. It helps you keep track of it.

10 Your verdict on each count will be either guilty  
11 or not guilty.

12 All right, gentlemen, would you come forward,  
13 please.

14 (At the side bar.)

15 MR. O'ROURKE: Judge, yesterday in chambers we  
16 discussed the matter of interested witnesses. I take  
17 exception to the Court's refusing to charge that Mr. Hui and  
18 Mrs. Higgins were interested witnesses.

19 THE COURT: All right.

20 MR. O'ROURKE: I would like the Court to charge  
21 particularly with respect to our comments on Mr. Major not  
22 testifying. The Court's charge I felt might have suggested  
23 that the defendant had an equal duty to produce witnesses.

24 THE COURT: No. I said he could have been produced  
25 by either side. You could have done it, sure.



1 rg21

2 MR. O'ROURKE: Yes, I would like the Court to  
3 charge --

4 THE COURT: You have an exception. I won't charge  
5 it.

6 MR. O'ROURKE: You haven't heard me.

7 THE COURT: I think I know what you want me to  
8 charge, but go ahead and tell me.

9 MR. O'ROURKE: That the defendant has absolutely no  
10 obligation to produce any witnesses.

11 THE COURT: I won't charge that. You have an  
12 exception.

13 MR. O'ROURKE: Otherwise no exceptions.

14 THE COURT: Thank you very much.

15 How about you?

16 MR. REILLY: Nothing, your Honor.

17 THE COURT: Thank you very much.

18 (In open court.)

19 (The alternate jurors were excused.)

20 (The marshal was sworn.)

21 THE COURT: Mark the indictment as a Court's exhibit  
22 and hand it to the forelady, please.

23 (Indictment marked Court's Exhibit 1.)

24 THE COURT: All right, ladies and gentlemen, you  
25 may now retire. Accompany the marshal to the jury room and

1 rg22

2 commence your deliberations. I hope you get some sandwiches  
3 in due course.

4 THE FORELADY: Will all of this be coming with us,  
5 all the evidence being marked?

6 THE COURT: You want all the exhibits?

7 JUROR NO. 3: We want 62, 63 and 64.

8 THE COURT: Why don't we send those right into you,  
9 62, 63 and 64.

10 THE FORELADY: In addition, the statement in Mr.  
11 Keefe's office which half the jury did not see.

12 THE COURT: Okay. Would you send that in. I will  
13 see they are sent right in to you and then if you want any  
14 more exhibits just let the marshal know.

15 THE FORELADY: Thank you.

16 THE COURT: All right.

17 (At 11:50 a.m. the jury retired to the jury room  
18 to commence their deliberations.)  
19  
20  
21  
22  
23  
24  
25



1 rglp 167

2 (Exhibits 62, 63, 64 and 65 in evidence sent  
3 into jury room.)

4 (Recess.)

5 (Note received at 1:31 p.m.)

6 (Note marked Court's Exhibit 2.)

7 (Government's Exhibits 68, 63, 64, 58, 59  
8 and 40-0 sent into jury room.)

9 (At 2:40 p.m., the jury returned to the court-  
10 room.)

11 (Jury roll called - all present.)

12 THE CLERK: Madam Forelady, has the jury reached  
13 a verdict?

14 THE FORELADY: Yes, they have, your Honor.

15 THE CLERK: How do you say on the first count?

16 THE FORELADY: Guilty.

17 THE CLERK: On the second count?

18 THE FORELADY: Guilty.

19 THE CLERK: The third count?

20 THE FORELADY: Guilty.

21 THE COURT: I wonder, is your verdict guilty on  
22 all these thirty-four counts?

23 THE FORELADY: Our verdict is guilty on all  
24 thirty-four counts.

25 THE COURT: Thank you very much. I don't think

DA 24

1 rglp 168

2 we need to go through it all.

3 Would you like the jury polled?

4 MR. O'ROURKE: Yes.

5 THE CLERK: Members of the jury, listen to your  
6 verdict as it stands recorded. You say you find the defendant  
7 guilty on counts 1 through and including 34.

8 (Each juror, upon being asked by the Clerk "Is  
9 that your verdict?", answered in the affirmative.)

10 THE CLERK: The jury stands polled.

11 THE COURT: Ladies and gentlemen, in your note  
12 telling me that you had reached a verdict you added a statement  
13 here that "The members of the jury wish to know if it is per-  
14 missible to make the recommendation as to sentencing and if  
15 so what guidelines should we use?"

16 There is no rule about that at all and no guide-  
17 lines. As you know, the duty of imposing sentence here rests  
18 upon me, but needless to say, you ladies and gentlemen have  
19 been here for a couple of days and I would be delighted to  
20 hear anything you would like to say. I can't promise to  
21 follow anything you say, but I would be delighted to hear any  
22 views that anybody would like to express on that for my own  
23 help.

24 Yes, ma'am.

25 THE FORELADY: We feel that Mr. O'Savio is a



DA 25

1 rglp 169

2 first offender and since his character seems to be very good  
3 we would like to recommend leniency for him.

4 THE COURT: I am awfully glad you have done that  
5 and you have done it on the record.

6 Are you all in agreement?

7 (All jurors answered in the affirmative.)

8 THE COURT: Thank you very much. There is  
9 nothing further I can do except to thank you.

10 I don't comment on a jury verdict because as I  
11 tried to impress you when I charged you earlier, I think a  
12 jury verdict in a criminal case is a very sacred thing,  
13 because it represents the conscientious convictions of twelve  
14 representative citizens. I don't think I have any right to  
15 comment on it or anybody else has any right to comment on it,  
16 but I do want to thank you.

17 These things are not fun, being on a jury in a  
18 criminal case. It's difficult to pass on the guilt or inno-  
19 cence of a fellow citizen, but this is the way the system  
20 works and it's probably the best way it works, so I am very  
21 grateful to all of you for the care and attention you have  
22 shown here and the thought that you have taken throughout your  
23 deliberations in asking to see these exhibits and various  
24 things.

25 This wasn't the easiest case in the world, as I

1 rglp 170

2 guess the lawyers recognized and you recognized, and I want to  
3 thank you for all that you have done.

4 What are the instructions for the jurors?

5 THE CLERK: The jurors are released until Monday.  
6 Try and be in at 9:15 in the Central Jury Room on the first  
7 floor.

8 THE COURT: Thank you very much.

9 (Jury excused.)

10 THE COURT: Any motions?

11 MR. O'ROURKE: May I reserve the right to make  
12 motions until the date of sentence, your Honor?

13 THE COURT: You may. The only thing about that,  
14 if you do I want it on papers and I will give the Government  
15 an opportunity to answer the papers, so let's set a date for  
16 sentence and then we can try to set a timetable.

17 I would like a pre-sentence report with respect  
18 to Mr. O'Savio.

19 Mr. O'Savio, I want to know what is going for  
20 you as well as what happened in court. I want you to cooperate  
21 with the Probation Department and give them whatever informa-  
22 tion they require.

23 I think that is going to take about six weeks.  
24 My thought would be to set down the sentencing for Tuesday,  
25 December 28.



1 rglp 171

2 MR. O'ROURKE: This room?

3 THE COURT: This room, yes. At 9:15 in the  
4 morning.

5 Would that be agreeable to the Government?

6 MR. REILLY: Certainly, your Honor.

7 THE COURT: Would that be agreeable to you, Mr.  
8 O'Rourke?

9 MR. O'ROURKE: Yes.

10 THE COURT: What is the bail status of the  
11 defendant?

12 MR. REILLY: The bail status is a \$25,000 PRB.

13 Your Honor, when you mentioned about passing  
14 judgment on a fellow citizen it reminded me that Mr. O'Savio  
15 is not a citizen. He does come from Jamaica. I am a little  
16 concerned, considering his conviction on so many counts. The  
17 possibility of punishment is great, notwithstanding what the  
18 jury's recommendation was and I would at least like a co-  
19 signer on the bonds, number one, and number two that certain  
20 travel documents be surrendered to the U.S. Attorney, his  
21 Jamaican passport or whatever it is.

22 THE COURT: What do you have to say?

23 MR. O'ROURKE: We would be happy to have Mrs.  
24 Bostic, a pastor of the church for fifteen years, sign a PRB.  
25 He is married to her daughter for approximately six weeks or

1 rglp 172

2 so.

3 While it is true he is a native of Jamaica, he  
4 is very much interested in spending the rest of his life in  
5 the United States. Knowing what he faced he stood here and  
6 faced this rather than go back to Jamaica, so I don't think  
7 the Court has anything to fear.

8 THE COURT: What kind of a document does Mr.  
9 O'Savio travel on, a Jamaican passport?

10 MR. O'ROURKE: Yes, sir. He would be happy to  
11 surrender the Jamaican passport.

12 THE COURT: I think that if the Government has  
13 no objection I would like to see the Jamaican passport  
14 delivered to you and under your promise that you will hold it  
15 -- I don't see much need for him to submit it to the Govern-  
16 ment, but if he would do that, and if you have no objection --

17 MR. REILLY: I have no objection to Mr. O'Rourke  
18 having it.

19 THE COURT: Fine, if that will be done.

20 Now, Mr. O'Savio, I want to ask you a couple of  
21 questions. Would you kindly stand up.

22 Do you promise me to appear on December 28, the  
23 date of sentencing?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: You promise me faithfully that you



1 rglp 173  
2 will appear?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: You promise me you will appear any  
5 time you are asked to appear in this court?

6 THE DEFENDANT: Yes.

7 THE COURT: All right. I will continue you on  
8 your present bond, and I understand Mrs. Bostic has been good  
9 enough to say she will be good enough to go along as a co-  
10 signer.

11 MR. O'ROURKE: Yes.

12 THE COURT: I will ask you to give your passport  
13 to Mr. O'Rourke to hold pending sentencing.

14 MR. REILLY: May I ask that you advise the  
15 defendant that it is a separate federal felony if he does not  
16 appear?

17 MR. O'ROURKE: I didn't hear that.

18 THE COURT: I will do that, yes.

19 Mr. O'Savio, if you do not appear, you know,  
20 that would mean not only that your bond would be forfeited,  
21 but you would be subject to another prosecution where the  
22 possible term could be five years' imprisonment.

23 Do you understand that, sir?

24 THE DEFENDANT: Yes.

25 THE COURT: My main point in any of these cases

1 rglp 174

2 is to put my faith in people and I want to put my faith in  
3 you, that you will appear here.

4 THE DEFENDANT: Yes, sir.

5 MR. O'ROURKE: It is my understanding that you  
6 are directing Mr. O'Savio to deliver his passport to me  
7 tomorrow before 5:00 o'clock and if it's not delivered I am  
8 to notify Mr. Reilly, is that correct?

9 THE COURT: Absolutely, yes, but I am expecting  
10 you to do that and you are going to deliver your passport to  
11 Mr. O'Rourke.

12 THE DEFENDANT: Yes.

13 THE COURT: That's right.

14 On the motion, Mr. O'Rourke, if we have the  
15 sentencing on December 28, I would like you to file your  
16 motion, if you want to file a motion, by December 7.

17 MR. O'ROURKE: Fine.

18 THE COURT: I would like the Government to file  
19 an answer, say, by December 14. Would that be agreeable?

20 MR. REILLY: Yes, that would be fine, your Honor.

21 THE COURT: I want to schedule this so I will  
22 have the papers well in advance and I will be hitting the  
23 Christmas season at that point.

24 All right, we will do it on that basis, on that  
25 schedule, then.



1 rglp 174a

2

MR. O'ROURKE: Thank you.

3

THE COURT: Okay.

4

\*\*\*\*\*

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 bslp 71

2 A F T E R N O O N S E S S I O N

3

4 (Open court - jury present.)

5 THE COURT: You will recall before lunch the  
6 Government rested, and we will now proceed to hear the de'en-  
7 dant's case.

8 You may proceed, Mr. O'Rourke.

9 MR. O'ROURKE: Mr. O'Savio, please.

10 E R R O L G . O ' S A V I O , called as a  
11 witness in his own behalf, first being duly sworn by  
12 the Deputy Clerk of the Court, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. O'ROURKE:

15 Q Mr. O'Savio, would you speak loud enough so I  
16 can hear you. That way everybody in the jury can hear you.

17 Where do you reside?

18 A At present I am at 35 Pine Street, Yonkers, New  
19 York.

20 Q How long have you lived there?

21 A I have been there three weeks.

22 Q How old are you?

23 A I am twenty-five.

24 Q You worked for the National Bank of Westchester  
25 from when to when?



- 1       bslp   72                           O'Savio-direct
- 2           A       June, 1973 until March, 1976.
- 3           Q       At what position did you start with the National
- 4 Bank of Westchester?
- 5           A       I was a teller.
- 6           Q       You were what?
- 7           A       A teller.
- 8           Q       During that period of time where did you live?
- 9           A       At 121 Prospect Avenue.
- 10          Q       With whom?
- 11          A       With my parents.
- 12                   THE COURT: Prospect Avenue where?
- 13                   THE WITNESS: Greenboro.
- 14          Q       With your parents?
- 15          A       Yes.
- 16          Q       On approximately March 28 of this year, were you
- 17 approached in the bank by the bank manager and Mr. Major?
- 18          A       No, not by the bank manager and Mr. Majors. It
- 19 was March 29.
- 20          Q       What, if anything, occurred then?
- 21          A       Well, he told me that he had some problems with
- 22 the treasury tax deposit receipts, and if I could shed any
- 23 light on the matter, and I told him no.
- 24          Q       While you were working for the bank -- withdrawn.
- 25                   You saw the various exhibits that were offered in



1 bs1p 81 O'Savio-direct-cross

2 Q Mr. O'Savio, with respect to these items that  
3 were offered in evidence, and with respect to the figures that  
4 Mr. Huie mentioned when he testified, did you in fact take any  
5 money from National Bank of Westchester for your own use?

6 A No, sir, I did not.

7 Q At any time during the three years that you  
8 worked there?

9 A No, sir.

10 Q Did you ever take any money and subsequently  
11 put it back into an account?

12 A No, sir.

13 MR. O'ROURKE: Thank you.

14 CROSS-EXAMINATION

15 BY MR. REILLY:

16 Q Mr. O'Savio, I'm going to show you 39A, B, C and  
17 D. Your name appears in particular on the record for 5-1,  
18 5-3, 5-4.

19 Would you examine those places where your name  
20 appears and tell us whether those are your signatures?

21 A Yes, sir.

22 Q And was it the procedure at the bank when you  
23 were issued a teller's stamp and a slug to sign in this record  
24 39A through D for the stamp and slug?

25 A Yes, sir.



1       bslp   123                   Carter-cross/Bostic-direct  
2           A       Errol's.  
3           Q       By Errol you are referring to Mr. O'Savio?  
4           A       Mr. O'Savio.  
5           Q       And on what date was it stamped out?  
6           A       October 31.  
7           Q       Do you have any recollection yourself of  
8       stamping out TTL checks on Mr. O'Savio's machine at any time  
9       when you were employed at the bank?  
10          A       No.  
11               MR. REILLY: I have no further questions.  
12               THE COURT: Any other questions?  
13               MR. O'ROURKE: No.  
14               THE COURT: Thank you. You are excused.  
15               (Witness excused.)  
16               MR. O'ROURKE: Mrs. Boswic, please.  
17       R E V E R E N D   B E A T R I C E   B O S T I C ,  
18               called as a witness, first being duly sworn, testified  
19               as follows:  
20       D I R E C T   E X A M I N A T I O N  
21       B Y   M R .   O ' R O U R K E :  
22           Q       Mrs. Bostic, are you employed or do you have a  
23       profession, a business?  
24           A       I am a pastor of the Mount Olivet Apostolic  
25       Faith Church, Inc.



1       bslp   124                   Bostic-direct

2           Q       Is that located in Mount Vernon, New York?

3           A       163 South Eleventh Avenue, Mount Vernon, New

4       York.

5           Q       Is your husband associated with you in that

6       church?

7           A       He is the assistant pastor.

8           Q       How long have you been pastor of that church?

9           A       Fifteen years.

10          Q       Do you know Mr. O'Savio?

11          A       Yes, sir.

12          Q       Is he related to you?

13          A       Yes, he is now.

14          Q       How long has he been related to you?

15          A       A month.

16          Q       How long have you known him?

17          A       Three years.

18          Q       Does he belong to your church?

19          A       He is a member. He is a minister of the church.

20       He is one of the trustees. He is president of the men's

21       department, past president of the young people's association,

22       for two years.

23          Q       You, of course, know people in the church

24       community that know Mr. O'Savio?

25          A       Yes, well known.



1 bslp 125 Bostic-direct-cross

2 Q What is his reputation for truthfulness and  
3 honesty in the church community?

4 A A1. That's why he's on the trustee board. And  
5 also a minister of the church and the organization.

6 MR. O'ROURKE: Thank you.

7 CROSS-EXAMINATION

8 BY MR. REILLY:

9 Q How are you related to Mr. O'Savio?

10 A He's married to my daughter.

11 Q You are his mother-in-law?

12 A I am the mother-in-law.

13 MR. REILLY: Thank you very much for your  
14 testimony.

15 THE COURT: Thank you, Mrs. Bostic.

16 (Witness excused.)

17 MR. O'ROURKE: Your Honor, at this point the  
18 defendant will rest.

19 THE COURT: All right.

20 Ladies and gentlemen, at this point, thanks  
21 again to you, we are through with all the evidence in this  
22 case, and the next stage of the trial are the summations of  
23 the lawyers, and then my charge.

24 There are some administrative matters I have to  
25 talk to the lawyers about before we reach that, and so what I



COPY RECEIVED

ROBERT B. FINE JR.  
661 3-1977 JR.

U. S. ATTORNEY  
SO. DIST. OF N. Y.